

## Best Practices for Native American and All Families

by Claire Chiamulera

Every child benefits from connections to their communities, culture, and heritage. These connections give them a sense of place and belonging. Children who enter the child welfare system risk losing these connections. American Indian children historically have faced a greater risk of lost connections, a trend that is changing but requires family advocates to play a role to keep the momentum.

Utah Court of Appeals Judge William Thorne, speaking at the Third National Parent Attorneys Conference in Washington, DC, July 11, 2013, stressed the important roles of parent attorneys when Native American families' ties are at risk. Judge Thorne took the audience back in time, providing a frank look at the United States' treatment of Indian families. He then shared how a federal policy shift brought new hope for Indian families and advocacy tips for parent attorneys.

### Lost Connections

Judge Thorne described a period 150 years ago when Indian children were stripped from their families and tribes and placed in government-run schools in an effort to "civilize" them. The practice broke up intergenerational training and teachings that occurred in Indian country.

"Grandparents, aunts and uncles, and elders taught children what it was to be a member of a family, what it was to be a member of a community, what your responsibilities were to your neighbors," recalled Judge Thorne. At the schools, children learned from dormitory matrons, reading and writing was prohibited, and children were taught to be seamstresses, laborers, and cleaning women.

"Most of us learn to be parents based on how we were parented," said Judge Thorne. "These children learned to be adults from the matrons in the dormitories." He explained how

adults with problems at the schools were expected to stay home and address them and not bring them to work. As a result, children never witnessed adults struggle with a problem and work to overcome it.

"If there was a system designed intentionally to create dysfunctional families, this would be a candidate," said Judge Thorne. There was "nobody to pick the child[ren] up when they fall, nobody to comfort them when they cry, and nobody who says I believe in you when they screw up. We have this generation after generation after generation and we've done this in the name of helping."

### Separating Children from Tribes

Flash back to 50 years ago: government-run schools were still open, still stripping Indian children of their family and tribal connections. "I have friends who...had their mouths washed out with soap for speaking their tribal language outside of class during their free time," said Judge Thorne. He described school archways with letters spelling out "Tradition is the enemy of progress." When students graduated from school, they had to sign a promise not to eat traditional foods, not to speak their native language, and not to attend their cultural events as part of their graduation ceremony.

In 1958, the Child Welfare League of America (CWLA) and the Bureau of Indian Affairs created the Indian

Adoption Project, which placed Indian children who were removed for abuse or neglect in non-Indian homes. The "goal was to strip away the Indian identity, take kids away from their families and away from their communities so they could have a start at a modern life," said Judge Thorne. The impact? The program resulted in 25-35% of all Indian children in the country being removed from their families.

It was not until 30 years ago that this pattern shifted when the U.S. Congress took a close look at life in Indian country. As part of a 1977 study, Congress looked at foster care and adoption rates for Indian children, finding that Indian children were far more likely to be adopted and to be in foster care than non-Indian children.

### Policy Shift Brings Hope

The data led to passage of the Indian Child Welfare Act (ICWA) in 1978. Adopted with almost no dissent, ICWA aimed to prevent Indian children from being removed from their homes unnecessarily. It stressed the importance of family and tribal connections for Indian children and created protections for Indian families and tribes.

ICWA helped reverse course on a long history of tearing Indian families apart. However, 30 years since its passage, state data still show inequities in out-of-home placements for Indian children. A 2007 Governmental Affairs Office report on the disproportionate number of minority children in the child welfare system found Indian children were 2 – 8.5 times more likely to be out of home in the following states: CO, ND, UT, WA, IA, NB, MN, and OR.

Another study by the National Council of Juvenile and Family Court Judges comparing state adoption and foster care numbers found that a few states had improved, while others had

gotten worse (NV, ID, WA, WI, and MN).

Social science research looking at the impact when Indian children are removed from their homes and communities has found effects on Indian children's self-esteem and sense of self-worth. "If you take Indian children out of their homes and communities, where are the positive images of what they can achieve today?" asked Judge Thorne. "What world leader, governor, mayor, police officer, teacher, or doctor will Indian children look to inspire them about what they could dream of and say: *That could be me*. Without a dream, what are kids left with?"

Studies also show high teen suicide rates among Indian children being raised in non-Indian homes. Judge Thorne noted that teen suicide rates are twice as high in inner cities, higher than that on Indian reservations, and even higher among Indian kids being raised in non-Indian homes. "It's just the tip of the iceberg when we separate Indian kids from their families," he said.

Brain development research also reveals profound effects on children's brains when they are deprived of nurturing interaction. Judge Thorne noted work by prominent brain imaging researcher Dr. Ross Thompson at the University of California Davis showing that positive nurturing interactions are key to brain growth and that the brain atrophies without them. Cortisol, a hormone caused by long-term toxic stress, interferes with normal brain growth when it floods a child's brain. Dr. Thompson found that what makes that kind of stress tolerable is the presence of a caring adult who has a relationship with that child; that brings child's cortisol level back to baseline and help their brains grow.

Taking kids out of their communities and placing them with strangers traumatizes them, said Judge Thorne, adding that moving them periodically further traumatizes them. He said the average child moves two times while in foster care, 20% of kids spend more

than five years in foster care, and 30,000 will age out of foster care this year (a number that has risen over the last 15 years). "The system uses foster care 'just in case' and foster care is not good," he said.

### Tips for Advocates

Continued understanding of the impact of lost connections and the critical role of families and communities for children are reshaping practice. "Western science and tribal traditions have gotten to the same place now, finally," said Judge Thorne. "Both recognize that connections are necessary

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for those kids to be healthy. Children need their parents, their relatives, their neighbors. They need that in their life. If it's not perfect then let's fix it. Taking them away is not the solution except in the most extreme cases."

Judge Thorne called on attorneys representing parents in child welfare cases to be a voice for keeping families, Indian and non-Indian, together. "All children deserve the chance to be home," he said. "That means you're going to have to help educate people because the vast majority of state juvenile judges have no background in child development. They have the same prejudices, the same biases that people off the street do. . . . You're going to have to take the role of educating the players, or reminding them if they've already been educated, about why these children need their families and why foster care is not a just-in-case option."

Judge Thorne urged looking for solutions before children are taken from their homes and efforts to help parents keep their kids. "Don't be afraid to think outside of the box to find solutions for parents," he said. "People are looking to you to help them solve and navigate the system."

As an example Judge Thorne shared how the White Earth Tribe in

Minnesota is doing adoptions without terminating parental rights. If a parent can't care for their child, the tribe is saying there's no reason the child needs new siblings, new grandparents, new aunts and uncles. They bring in new parents but don't terminate the biological parents' rights, allowing the child to stay connected to family. The approach is proving successful: the disruption rate for White Earth adoptions is 1%, compared to 25-50% for adoptions from foster care.

If parental rights are terminated, Judge Thorne stressed ensuring the child has connections. "Just because

[the parent] can't care for the child on daily basis doesn't mean they don't have a role, that relatives don't have a role," he said. Who knows when drunk Uncle Joe 10 years down the road is going to be the person to pull the child aside and say "*I'm sober now but if you continue where you're going you're going to be exactly where I was.*" He might not be the person to take care of the child now, but he may be the very person the child needs to listen to and hear from later."

A 34-year veteran of juvenile court, Judge Thorne shared misgivings over past decisions to terminate parental rights in child welfare cases. "I've seen the effect on these kids and I remember the effect when I signed those termination papers 34 years ago. Now I see some of those children come back and I wish I could take that back. I wish I could impose a requirement of looking for solutions before taking children. I guess what I'm asking you to do is to redeem my failings, help parents keep their kids. Fix their problems *while* they keep their kids. It's what the children need."

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Claire Chiamulera is the editor of ABA Child Law Practice. **Video:** Visit [www.childlawpractice.org](http://www.childlawpractice.org) to see Judge Thorne's related video.